bill in equity will not lie to compel the delivery of bonds secured by one mortgage when the contract set out in the bill and sought to be enforced shows that the bonds contracted for were secured by a prior mortgage which has been cancelled, and that the bonds secured thereby have been destroyed, thus rendering specific performance impossible.

3. CHANCERY PRACTICE—*Administration of trust—Recitals in mortgage or deed of trust to secure bonds.* A recital in a deed of trust or mortgage to secure an issue of bonds by a corporation that the money derived from the sale of the bonds is to be used to pay the debts of the corporation creates no trust in favor of any creditor of the corporation either to deliver any of the bonds or pay over the proceeds thereof to him. Nor does the stipulation of the mortgagee or trustee to deliver a certain number of said bonds to the corporations "to be applied to the payment of its outstanding indebtedness and to such other uses as the board of directors shall determine" create any trust in the corporation which it can be called upon to administer in a court of equity.

DRIVER v. HARTMAN.—Decided at Richmond, December 6, 1898. *By the court.* Absent, *Riely* and *Cardwell*, JJ:

1. APPEAL AND ERROR—*Exclusion of evidence by trial court—Bill of exceptions—What must be shown.* The action of a trial court in refusing to allow a witness to answer certain questions will not be considered by this court unless the bill of exception shows what the exceptor expected or proposed to prove by the witness.

HAFFNER'S ADM'R v. CHESAPEAKE & OHIO RAILWAY CO.—Decided at Richmond, December 7, 1898.—*Keith*, P. Absent, *Riely* and *Cardwell*, JJ:

1. RETRIAL DE NOVO—*New evidence—Different judgment—Same evidence—Res judicata.* On a retrial *de novo* a party may introduce new evidence and establish an entirely different state of facts from that shown on the former trial, and to conform its judgment to the changed state of facts, is no violation of principle in a court even if thereby it sets aside its former decision as inapplicable and adopts a new one suited to the new phase of the controversy. But where the evidence is substantially identical on the two trials, and the relations of the parties thereto the same, as in the case at bar, the judgment on the first trial is conclusive.

2. RAILROADS—*Overhead bridges—Negligence—Contributory negligence.* It is negligence for a railroad company to operate its road with an overhead bridge only twenty-eight and a half inches above the tops of its cars, but if an employee knows or ought to know of the dangerous character of the bridge, and fails to use ordinary care to protect himself, in consequence of which he is injured, he is guilty of contributory negligence, and cannot recover for the injury.

3. RAILROADS—*Signal for brakes—Emergency.* The mere signal to put on brakes when approaching an overhead bridge which is very low, does not constitute such an emergency as to render a brakeman irresponsible for his acts.